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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

SUE EICHERLY,

Plaintiff and Appellant,

v.

COMMISSION ON JUDICIAL
PERFORMANCE,

Defendant and Respondent.

A151723

(San Francisco County
Super. Ct. No. CGC16555780)

Sue Eicherly sued the Commission on Judicial Performance (the Commission) because it had not given her information about its investigation into accusations she had made against a judge. The trial court sustained the Commission's demurrer to her complaint without leave to amend and entered a judgment of dismissal. She now appeals, contending she adequately alleged causes of action for violation of her due process rights (Cal. Const., art. I, § 7); violation of the Victims' Bill of Rights Act of 2008, known as Marsy's Law (Cal. Const., art. I, § 28); violation of the separation of powers doctrine (Cal. Const., art. III, § 3); and declaratory relief. We will affirm the judgment.

I. FACTS AND PROCEDURAL HISTORY

The Commission is an independent body within California's Judicial Branch, with constitutional authority to retire, remove, censure, or admonish a judge, and to disqualify a judge during the pendency of formal proceedings, subject to review by the California Supreme Court. (Cal. Const., art. VI, §§ 8, 18, subd. (d).)

The California Constitution expressly authorizes the Commission to “make rules for the investigation of judges” and to “provide for the confidentiality of complaints to and investigations by the [C]ommission.” (Cal. Const., art. VI, § 18, subd. (i)(1).) The Commission’s rules state that, except as otherwise provided, “all papers filed with and proceedings before the [C]ommission shall be confidential.” (Rules of Com. on Jud. Perf., rule 102(a).) If the commission institutes formal proceedings, information such as the charges and answer are open to the public. (Cal. Const., art. VI, § 18, subd. (j).)

It is well-established that the confidentiality mandate for investigations prior to the commencement of formal proceedings is critical to the Commission’s function. (E.g., *Commission on Judicial Performance v. Superior Court* (2007) 156 Cal.App.4th 617, 622; *Mosk v. Superior Court* (1979) 25 Cal.3d 474, 491–492; *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, 646–648.) “The confidentiality of the Commission’s investigations is based on sound public policy,” because it “encourages the filing of complaints and the willing participation of citizens and witnesses by providing protection against possible retaliation or recrimination.” (*Commission on Judicial Performance*, 156 Cal.App.4th at p. 622.) Confidentiality “protects judges from injury which might result from the publication of unexamined and unwarranted complaints by disgruntled litigants or their attorneys, or by political adversaries, and preserves confidence in the judiciary as an institution by avoiding premature announcement of groundless claims of judicial misconduct or disability.” (*Ibid.*) Thus, “maintaining confidentiality *before the commencement of formal proceedings* involving judicial performance serves legitimate state interests by avoiding premature announcement of groundless claims of judicial misconduct.” (*Adams*, 8 Cal.4th at p. 651.)

A. Eicherly’s Lawsuit Against the Commission

In December 2016, Eicherly sued the Commission in superior court. Her 55-page pleading (with over 160 pages of exhibits) alleged that she had submitted a complaint to the Commission on April 25, 2016, accusing the Honorable Robert J. Moss, Judge of the Orange County Superior Court, of “willful judicial misconduct” in lawsuits relating to a mobilehome park in which Eicherly once lived. The next day, the Commission

acknowledged receipt of the complaint and, on June 15, 2016, requested additional information. Eicherly allegedly provided this information. On July 26, 2016, the Commission sent a letter to Eicherly's counsel, stating that the complaint was "under consideration." On October 6, 2016, Eicherly's counsel wrote to the Commission requesting an update on the status of the complaint. By letter of November 30, 2016, counsel complained to the Commission about its apparent "inaction on the complaint." On December 6, 2016, counsel had a telephone conversation with the Commission's Director-Chief Counsel, who allegedly informed counsel that the complaint was "still under consideration." Eicherly filed her lawsuit three days later.

Eicherly's lawsuit purported to allege four causes of action against the Commission: violation of her due process rights under the California Constitution; violation of Marsy's Law; violation of the separation of powers; and declaratory relief. She asserted that the Commission was required by due process principles and Marsy's Law to inform her about the status of her complaint against Judge Moss and to pursue a criminal action against him or refer the matter to a prosecuting agency. She further asserted that the Commission—an agency within the judicial branch—had usurped the executive branch's power to decide whether criminal charges should be pursued against judges, and the executive branch "abdicat[ed]" this authority to the Commission.

B. Commission's Demurrer and Trial Court's Ruling

The Commission filed a demurrer to Eicherly's complaint, and the court sustained the demurrer without leave to amend. The court ruled that Eicherly had no cognizable due process claim, because she "fail[ed] to allege that she was deprived of a protected property or liberty interest and the Commission's confidentiality rules are entirely appropriate;" her claim under Marsy's Law failed because "[t]here is nothing in Marsy's Law that requires the Commission to provide the information that [Eicherly] seeks in this case;" her separation of powers claim failed because Eicherly did not "allege facts showing that the Attorney General's Office and/or the Executive Branch has abdicated or delegated its duty to prosecute the criminal wrongdoing of judges to the Commission;"

and her declaratory relief claim failed because “[i]t is derivative of the other defective claims and it is not ‘necessary or proper’ to entertain the claim at this time.”

Judgment was entered, and this appeal followed.

II. DISCUSSION

“In our de novo review of an order sustaining a demurrer, we assume the truth of all facts properly pleaded in the complaint or reasonably inferred from the pleading, but not mere contentions, deductions, or conclusions of law. [Citation.] We then determine if those facts are sufficient, as a matter of law, to state a cause of action under any legal theory.” (*Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1052.) “In order to prevail on appeal from an order sustaining a demurrer, the appellant must affirmatively demonstrate error. Specifically, the appellant must show that the facts pleaded are sufficient to establish every element of a cause of action and overcome all legal grounds on which the trial court sustained the demurrer.” (*Ibid.*)

A. Due Process Claim

Eicherly contends that, notwithstanding the established confidentiality of Commission investigations, she has a due process right to “certain information as to the status of the case against Judge Moss,” including whether and when the Commission informed the judge of her complaint, whether the Commission decided to defer action on the case, and whether the Commission has referred the matter to prosecuting authorities. In her view, the Commission’s confidentiality mandate “tramples [her] due process rights [under the California Constitution] to protect her home and property from the threat . . . [of] wrongful and criminal state action undertaken by a biased and corrupt judge who rules against her in complete and purposeful disregard of the law and her rights.” We disagree.

The due process clause of the California Constitution reads: “A person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws.” (Cal. Const., art. I, § 7(a).) The threshold inquiry is whether Eicherly has alleged facts from which it may be inferred that she was deprived of a protected interest in “liberty” or “property.” (*Today’s Fresh Start, Inc. v. Los Angeles County Office of*

Educ. (2013) 57 Cal.4th 197, 214.) Alternatively, she must “identify a statutorily conferred benefit or interest of which [she] has been deprived.” (*Ryan v. California Interscholastic Federation-San Diego Section* (2001) 94 Cal.App.4th 1048, 1071.)

Eicherly does not allege facts establishing that she has a liberty, property, or other due process interest in the Commission’s investigation of Judge Moss. The Commission’s investigation of the accusations she made about the judge do not threaten to take *her* liberty or property. Nor has she identified any statutory benefit or interest she has at stake in the Commission’s action.

Eicherly cites no legal authority suggesting she has any due process interest, and settled law confirms she does not. Members of the public have no judicially enforceable interest in the government’s decision whether to prosecute someone. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 450 (*Dix*).) Nor can an administrative agency be enjoined to investigate or institute enforcement proceedings against a third-party, where, as here, there is no clear indication that the Legislature intended to subject the agency’s discretionary decision-making to judicial review. (See *Sierra Club v. Whitman* (9th Cir. 2001) 268 F.3d 898, 902 [agency refusal to take enforcement action is a discretionary decision not subject to judicial review]; Cal. Const., art. VI, § 18, subs. (b), (d) [no provision for judicial review of Commission investigations before formal proceedings].) Because Eicherly has no right to compel the Commission to take action on her accusations against Judge Moss, she has no due process right to obtain information about the status of the complaint or the Commission’s investigation. (Cf. *Windham v. Franklin* (C.D. Cal., Aug. 29, 2014, No. CV 13-3004-SVW JEM) 2014 U.S. Dist. Lexis 181554 at *31 [“failure to respond to inquiries about the status of an investigation [into a prisoner complaint] does not violate due process”]; *Denhof v. Michigan* (W.D. Mich., July 10, 2014, No. 1:14-CV-495) 2014 U.S. Dist. Lexis 93507 at *36 [“Plaintiff fails to cite and the Court is unaware of any case suggesting that a prisoner has a due process right to be informed about the progress of any investigation.”].)

Eicherly contends she has a due process right to an impartial judge and needs confidential information from the Commission to protect that right. Not so. Her right to

an impartial judge is protected in other ways: she may challenge a judge in the trial court (see Code Civ. Proc., §§ 170.1, 170.6); if dissatisfied with that process, writ relief may be available upon a timely petition (Code Civ. Proc., § 170.3, subd. (d)); and “ ‘ “a claim of denial of the due process right to an impartial judge” ’ ” may be raised in a direct appeal of the legal proceeding at issue. (*Brown v. American Bicycle Group, LLC* (2014) 224 Cal.App.4th 665, 673.)¹

Eicherly also asserts that “[t]here has long been acknowledgement, both by the executive and legislative branches, of the problem of judge retaliation against complainants.” For this proposition, she cites a 1994 Assembly Committee on Judiciary report, which states that “[t]he secrecy that enshrouds CJP proceedings permits judges to retaliate.” She also cites a purported 1994 letter from the Attorney General to the Assembly Judiciary Committee, which states that “open ‘formal proceedings’ ” would “better protect complaining witnesses from judicial retaliation” and “complete openness during formal proceedings would serve to better protect our complaining witnesses from harassment or retaliation by the accused judge.”

Eicherly’s appellate counsel should know better. These documents were not before the trial court when it ruled on the demurrer, and the court’s ruling cannot be attacked on the basis of material Eicherly did not even present. Material not in the appellate record is usually disregarded on appeal. (*Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622, 632.) Although Eicherly has asked this court to take judicial notice of the documents, judicial notice is generally unavailable if the documents were not presented to the trial court, and she provides no basis for making an exception. (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3; *Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 882.)²

¹ In fact, Eicherly did make accusations against Judge Moss in her appeal in a case in which Judge Moss had ruled against her. (*Chodosh v. Palm Beach Park Association* (Dec. 17, 2018, G053798) [nonpub. opn.])

² Eicherly filed a “Motion and Request for Judicial Notice” on January 17, 2018, asking this court to take judicial notice of 15 documents that are not in the record from the trial court. We deferred ruling on the request until we considered the merits of the

In any event, the documents serve only to confirm that Eicherly has no due process claim. The documents are irrelevant, because they predated the Commission's rule that made public all formal proceedings instituted after February 28, 1995. (Cal. Const., art. VI, § 18, subd. (j).) And even if the cited material suggested that a byproduct of confidentiality was a risk of judicial retaliation, it does not establish that Eicherly has a due process right to confidential Commission information.

Indeed, even if Eicherly did have a protectible due process interest, she has not established entitlement to the information she seeks. The process that is due is that which "will, without unduly burdening the government, maximize the accuracy of the resulting decision and respect the dignity of the individual subjected to the decisionmaking process." (*Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, 390.) The Commission elicited information from Eicherly and told her its investigation was pending; she does not demonstrate entitlement to more.

B. Claim Under Marsy's Law

Pursuant to Marsy's Law, the California Constitution provides several enumerated rights to crime victims, including the right to be treated with fairness and respect, and free of intimidation, harassment, and abuse, throughout the criminal justice process; the right to be reasonably protected from the defendant and persons acting on the defendant's behalf; the right to prevent disclosure to the defendant, or persons on the defendant's behalf, of information that is confidential or privileged or could be used to locate or harass the victim; and the right to reasonable notice, and to reasonably confer with the prosecuting agency upon request, regarding the defendant's arrest, the charges filed, and any pretrial disposition. (Cal. Const., art. I, § 28, subd. (b)(1), (2), (4), (6).)

appeal. Despite Eicherly's failure to establish a basis for taking judicial notice, we now grant the request for the limited purpose of considering whether Eicherly might be able to state a cause of action by amending her pleading with these materials. As we conclude *post*, she cannot. Three days before oral argument, Eicherly filed another "Motion and Request for Judicial Notice," which we deny.

Eicherly contends these rights apply to her because Judge Moss's allegedly willful judicial misconduct was a "crime," and she is a "crime victim," within the meaning of Marsy's Law and Penal Code section 679.01. More specifically, she alleges that Judge Moss committed conspiracy to obstruct justice (Pen. Code, § 182) and perjury (Pen. Code, § 118), and the Commission deprived Eicherly of her "rights as a crime victim under the Marsy's Law to obtain information from law enforcement agencies as to the status of inquiry, investigation or proceedings against Judge Moss." Eicherly further alleges that she had a right under Marsy's Law to have the so-called "judge crime" prosecuted.

Assuming arguendo that Eicherly may be an alleged "victim" under Marsy's Law and may have adequately alleged a "crime" for purposes of withstanding a demurrer, nothing in Marsy's Law requires the Commission to reveal information about its investigation or to have the alleged "judge crime" prosecuted.

1. The Commission is Not a Prosecuting Agency

Under Marsy's Law, crime victims have a right to receive "reasonable notice of and to reasonably confer with the *prosecuting agency*" regarding "the arrest of the defendant," "the charges filed," and "upon request, to be notified of and informed before any pretrial disposition of the case." (Cal. Const., art. I, § 28, subd. (b)(6), italics added.) Similarly, Penal Code section 679.02 provides a right "[u]pon request of the victim or a witness, to be informed by the *prosecuting attorney* of the final disposition of the case, as provided by Section 11116.10." (Pen. Code, § 679.02, subd. (a)(2), italics added.)

The Commission, however, is not a "prosecuting agency" and does not employ a "prosecuting attorney." While Marsy's Law does not explicitly define those terms, "[t]he words 'prosecuting attorney' include any attorney, whether designated as district attorney, city attorney, city prosecutor, prosecuting attorney, or by any other title, *having by law the right or duty to prosecute, on behalf of the people, any charge of a public offense.*" (Pen. Code, § 691, subd. (d). Italics added.)

The Commission has no right or duty to prosecute any public offense. As established over four decades ago, the Commission "is not invested with the power to

prosecute a criminal action, nor is it a court with jurisdiction to legally convict and punish a person who is charged with a public offense.” (*McComb v. Superior Court* (1977) 68 Cal.App.3d 89, 97.) As the court in *McComb* explained: “A criminal action, a proceeding by which a party charged with a public offense is accused and brought to trial and punished (Pen. Code, § 683), is prosecuted in the name of the People of the State of California, as a party, against the person charged with the offense (Pen. Code, § 684), who is designated as the defendant (Pen. Code, § 685). No person can be punished for a public offense, except upon a *legal conviction in a court having jurisdiction thereof* (Pen. Code, § 681). The commission has no authority to prosecute or punish a person charged with a public offense; the power of the commission extends no further than to *recommend* to the Supreme Court the removal or retirement of a judge who is the subject of a proceeding under article VI, section 18 of the Constitution.” (*Ibid.*)

As our Supreme Court put it, “the prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor.” (*Dix v. Superior Court*, *supra*, 53 Cal.3d at p. 451; see Govt. Code, § 26500 [“The district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.”]; Cal. Const., art. V, § 13 [“When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.”].)

Eicherly argues in her opening brief that the Commission is “the official designated repository for complaints alleging judge crime,” and the Commission’s policy guidelines require Commission staff attorneys to report possible criminal conduct of a judge to the Commission. She refers us to a statement on a website of the Office of the Attorney General that “[c]omplaints against a judge or court commissioner should be directed to the [Commission on Judicial Performance].”

Even if we took judicial notice of the Attorney General’s statement, it does not show that the Commission is a prosecuting agency; it merely shows how a complaint against a judge is to be instituted. And the mere fact that the Commission is a repository

for complaints about judges – which may or may not allege an actual “judge crime” – does not make it the agency that *prosecutes* judges for public offenses.

Eicherly essentially concedes that the Commission lacks power to prosecute crimes in her complaint, by demanding that the Commission refer her accusations against Judge Moss to “prosecuting authorities.” In fact, Eicherly insists elsewhere in her opening brief that the “[Commission’s] role is to deal with judicial disciplinary matters, *not* criminal prosecution responsibilities.” (Italics added.) Plainly contrary to law and the allegations of her own pleading, Eicherly’s claim against the Commission as a prosecuting agency is utterly devoid of merit.

2. The Commission is Not a Law Enforcement Agency

Eicherly also contends the Commission is a “law enforcement agency” governed by Marsy’s Law. But she does not point to any obligations that Marsy’s Law directly imposes on any “law enforcement agency.”

The enabling statute for Marsy’s Law does require “[e]very law enforcement agency investigating a criminal act and every agency prosecuting a criminal act” to provide or make available to the crime victim a “ ‘Marsy’s Rights’ ” card. (Pen. Code, § 679.026, subd. (c)(1).) It also requires every “law enforcement agency investigating a criminal act” to provide to every crime victim a victim’s survival guide. (*Ibid.*)

Eicherly fails to allege a valid cause of action based on these provisions. First, she does not allege that she failed to receive a Marsy’s Rights card or victim survival guide.

Second, Eicherly does not allege facts from which it may be inferred that the Commission is a “law enforcement agency.” Although the enabling statute for Marsy’s Law does not define “law enforcement agency,” other sections of the Penal Code do, by referencing agencies “expressly authorized by statute to investigate or prosecute law violators” (Pen. Code, §§ 1545, subd. (b); 290.45, subd. (f)) or agencies “whose primary function is detection, investigation, or apprehension of criminal offenders, or whose primary duties include detention, pretrial release, posttrial release, correctional supervision, or the collection, storage, or dissemination of criminal history record

information” (Pen. Code, § 186.34, subd. (a)(3)). The Commission does not have the statutory authorization or primary functions or duties described by these statutes.

3. The Other Provisions of Marsy’s Law Do Not Apply

The other provisions cited by Eicherly state the rights of a crime victim “[t]o be treated with fairness and respect for his or her privacy and dignity . . . throughout the criminal . . . justice process;” “[t]o be reasonably protected from the defendant and persons acting on behalf of the defendant;” and “[t]o prevent the disclosure of confidential information or records to the defendant, the defendant’s attorney, or any other person acting on behalf of the defendant.” (Cal. Const., art. I, § 28, subd. (b)(1), (2), (4).)

These provisions are plainly inapplicable. A Commission investigation is not part of the “criminal . . . justice process” because, as discussed *ante*, the Commission cannot bring criminal charges against a judicial officer. Protection from a “defendant” and disclosures to the “defendant” are immaterial, since Judge Moss has not been charged with a crime and therefore is not a “defendant” in a criminal justice proceeding. (See Pen. Code, § 685.)

C. Separation of Powers Claim

Article III, section 3 of the California Constitution provides: “The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.”

Eicherly contends the Commission violates the separation of powers provision because it exercises power delegated to the executive branch, by deciding whether to *refer* matters to prosecuting authorities for criminal prosecution. She alleges: “To the extent constitutional provisions have purported to make the COMMISSION the arbiter and handler of complaints against judges who are alleged to have committed crimes, such provisions are unconstitutional for breach of separation of powers, the taking and transfer of executive branch law enforcement from the executive branch to the judicial branch.” Similarly, she alleges that the Commission, by exercising its discretion in making a referral for prosecution, is engaging in “the taking and transfer of executive branch law

enforcement from the executive branch to the judicial branch.” She thus seeks a declaration that the Commission “cannot act as arbiter and decider as to whether to refer [her] complaint to prosecuting authorities within the executive branch,” and that upon receipt by the Commission of “substantial evidence that the willful misconduct of a judicial officer may also be a crime, that the COMMISSION must submit the complaint to prosecuting authorities.”

Eicherly’s argument is meritless. The Commission does have discretion to turn over to prosecuting agencies any *information* it finds that reveals possible criminal conduct by a judge. (Rules of Com. on Jud. Perf. 102(g).) Exercising that discretion, however, does not mean it exercises powers not given to it. Deciding whether to refer information *to* a prosecuting authority is not the exercise *of* prosecutorial authority: the Commission is not prosecuting crimes for the executive branch, or deciding for the executive branch what cases brought to a prosecuting agency should be prosecuted.

Nor is it shown that the Commission’s discretion to refer information to a prosecuting agency shields judges from prosecution, as Eicherly suggests. If the Commission gives information to a prosecuting agency, the prosecuting agency has more information than it might otherwise have. If the Commission does not pass along the information to a prosecuting agency, the prosecuting agency can still learn about it from the original or other source, investigate, and prosecute the matter. District attorneys may charge judges with public offenses without referral from the Commission, and they may decide that charges are inappropriate even if the Commission has referred information.

In her opening brief, Eicherly notes that the trial court rejected her separation of powers claim because she failed to allege facts showing that the Attorney General or executive branch had abdicated or delegated to the Commission its duty to prosecute a judge’s crime. She proclaims: “The question on appeal is whether the facts alleged, deemed true, demonstrate separation of powers violation. They do.” But she does not explain *what* allegations in her pleading demonstrate the violation. She therefore fails to establish error in the sustaining of the demurrer.

Eicherly instead argues that the Attorney General tells the public to make all complaints about judges to the Commission, citing material that was not before the trial court: the Attorney General website, which states that “[c]omplaints against a judge or court commissioner should be directed to” the Commission, and Attorney General form letters stating that the Commission “is the independent state agency . . . responsible for investigating complaints of judicial misconduct” and “has exclusive jurisdiction over judicial complaints.”

Even if we took judicial notice of these materials, they would do Eicherly no good. The Attorney General’s purported statement that complaints against a judge should be directed to the Commission does not show that the Commission is usurping prosecutorial discretion with respect to crime. Nor does it suggest that persons with evidence of a *crime* cannot submit that evidence to a district attorney’s office. Similarly, the statement that the Commission has “exclusive jurisdiction over judicial complaints” must be interpreted in light of the preceding sentence, which describes the Commission as the agency authorized by the California Constitution to “investigat[e] complaints of *judicial misconduct and judicial incapacity and for disciplining judges*.” (Italics added.) This accurately states the Commission’s authority under our state constitution, and therefore does not support a separation of powers claim. (See *Adams, supra*, 8 Cal.4th at p. 649 [Commission’s exercise of authority as granted by California Constitution does not contravene separation of powers].)

D. Declaratory Relief

Where a plaintiff has not stated sufficient facts to support a cause of action, a demurrer is properly sustained as to a claim for declaratory relief that is entirely derivative of those causes of action. (*Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800.)

Here, Eicherly’s declaratory relief claim seeks a declaration that the Commission violates due process, Marsy’s Law, and the separation of powers, and it is therefore wholly derivative of her other claims. Because those other claims are insufficient as a

matter of law, the court properly sustained the demurrer as to Eicherly's declaratory relief claim as well.

In sum, Eicherly fails to establish that the allegations of her complaint state any viable cause of action, or that the court erred in sustaining the Commission's demurrer.

E. Denial of Leave to Amend

Leave to amend should be denied where the facts are not in dispute and the nature of the claim is clear, but no liability exists under the substantive law. (*Buller v. Sutter Health* (2008) 160 Cal.App.4th 981, 992.) We review a denial of leave to amend for an abuse of discretion; the appellant must show how the complaint could be amended and how, as so amended, the pleading would state a cause of action. (*Ibid.*)

Eicherly did not assert in the trial court, and has not asserted in her appellate briefs, that she could allege any facts that would state any cause of action. She fails to demonstrate that the trial court erred in sustaining the demurrer without leave to amend. Accordingly, no error has been shown in the dismissal of Eicherly's complaint.

III. DISPOSITION

The judgment is affirmed.

NEEDHAM, J.

We concur.

JONES, P.J.

SIMONS, J.

(A151723)